RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
DUKE POWER COMPANY, et al.	)	Docket Nos. 50-413
	)	50-414
(Catawba Nuclear Station, Units 1 and 2)	)	

APPLICANTS' MOTION FOR PARTIAL SUMMARY DISPOSITION REGARDING PALMETTO ALLIANCE CONTENTION 6

Pursuant to 10 C.F.R. §2.749, Duke Power Company, et al. ("Applicants") herein move the Atomic Safety and Licensing Board ("Board") in the captioned proceeding to grant partial summary disposition as to Intervenor Palmetto Alliance's Contention 6. [1]/ Applicants submit that as to the foregoing contention's reliance upon the allegations of Messers. Ronald McAfee and Nolan R. Hoopingarner there is no genuine as to any material

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[1] In its Memorandum Order of June 20, 1983, this Board in setting forth a tenative schedule stated:

> We have not included a summary disposition date for Contention 6 because, as indicated in our Order of June 13, 1983 (p. 8, Note 2), it does not appear to be answerable to that procedure. [at p. 18, n. 3)]

The Board's Memorandum and Order of June 13, 1983 states:

> We see no point in going through the summary disposition procedure with respect to the QA welding concerns discussed in this order. These concerns will involve credibility issues which can only be resolved in a hearing [at p. 8, n. 2]

The QA welding concerns discussed in the Order are separate and apart from the concerns raised by Messrs. McAfee and Hoopingarner. Accord-ingly, Applicants have moved for summary disposition as to that aspect of Contention 6 which relies upon the allegations of Messrs. McAfee and Hoopingarner.

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fact, and that Applicants are therefore entitled to summary disposition in their favor as to those aspects of the contention as a matter of law.

In accordance with §2.749, there are attached to this Motion with respect to the contention a statement of the material facts as to which there is no genuine issue to be heard, a brief discussion of the contention, and supporting affidavits.

ARGUMENT

Applicable NRC and federal authority compel summary disposition in the absence of disputed issues of material fact

The Commission's Rules of Practice with respect to contentions are designed to insure that only contested issues involving disputes over material facts will be adjudicated in NRC proceedings.[2] In particular, 10 C.F.R. §2.749 provides for summary disposition of contentions on the pleadings where

> the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.

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[2] See Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974), wherein the Appeal Board stated (p.21) that:

> there must ultimately be strict observance of the requirements governing intervention, in order that the adjudicatory process is invoked only by those persons who have real interests at stake and who seek resolution of concrete issues. The fact that a contention may be adequate for purposes of Section 2.714 does not mean that it necessarily gives rise to a genuine issue which must be heard--such a contention is subject to being summarily rejected on the merits under the provisions of Section 2.749 of the Commission's Rules of Practice.

Both the Commission and the Appeal Board have encouraged the use of summary disposition to dispense with the litigation of contested contentions where an intervenor fails to establish that a genuine issue of material fact[3] exists with regard to the contention. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-73-12, 6 AEC 241, 242 (1973), affd. sub nom. BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974); Houston Lighting and Power Co. (Allen's Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550 (1980) (Summary disposition provides "an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrably insubstantial issues . . ."). See also the Commission's Statement of Policy on the Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981), wherein the Commission noted its determination to seek to avoid or reduce delay in licensing proceedings "whenever measures are available that do not compromise the Commission's fundamental commitment to a fair and thorough hearing process." Id. at 453. One of the procedural tools which the Commission urged its licensing boards to use in "exercising [their] authority to regulate the course of a hearing" is to encourage parties to "invoke the summary disposition procedure on issues where there is no genuine issue of material fact so that evidentiary hearing time is not unnecessarily devoted to such issues." Id. at 457.

The availability of summary disposition in NRC proceedings serves as a counterbalance to the lenient standards for admission of contentions.

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[3] The availability of summary disposition in NRC proceedings serves as A material fact is one that may affect the outcome of the litigation. Mutual Fund Investors, Inc. v. Putnam Management Co., 553 F.2d 620, 624 (9th Cir. 1977).

As the Appeal Board has acknowledged, the fact that a contention may be adequate for the purpose of admissibility under §2.714 "does not carry with it any implication that we view the contention to be meritorious" (Houston Lighting and Power, supra, 11 NRC at 549), or that it "necessarily gives rise to a 'genuine issue' [which must] be heard . . ." Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 425 n.4 (1973). Thus a hearing on every contention admitted "is not inevitable;" rather, whether one will be necessary "wholly depends upon the ability of the intervenors to demonstrate the existence of a genuine issue of material fact respecting any of the issues they previously raised." Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-654, 14 NRC 632, 634 (1981).

In sum, the purpose of summary disposition in NRC proceedings is not to deny a party his right to a trial if in fact he has an issue worthy of adjudication (e.g., hard evidence to be offered at trial). Rather, a summary disposition motion is designed to test, in advance of trial, whether such evidence in fact exists. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), LBP-75-10, 1 NRC 246, 247-48 (1975). Section 2.749 "provides an ample safeguard against an applicant or the regulatory staff being required to expend time and effort at a hearing on any contention advanced by an intervenor which is manifestly unworthy of exploration." Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 228 (1974). In view of the facts in this proceeding, summary disposition is entirely appropriate.

Section 2.749 of the Commission's Rules of Practice is analogous to Rule 56 of the Federal Rules of Civil Procedure, which governs motions for summary judgment. While judicial proceedings and administrative

adjudicative proceedings are not interchangeable, NRC Licensing and Appeal Boards have determined that "the principles governing summary judgment in Federal practice are appropriate for use in determining motions for summary disposition . . ." Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), LBP-74-36, 7 AEC 877, 878 (1974).[4]

Under both Federal and NRC rules, the burden of demonstrating the absence of any issue of material fact is upon the moving party.[5] In determining whether the movant has met this burden, the record is to be viewed in the light most favorable to the party opposing the motion.[6]

If the movant's papers are sufficient to support the motion, the opposing party must controvert the showing. A party opposing a motion for summary disposition need not show that he will prevail on the contention at trial; but, rather, only that there exists a genuine issue for trial. Gulf States Utilities Co., supra, LBP-75-10, 1 NRC at 247. Nevertheless, the opponent's version of the facts must support a viable legal theory which, if accepted, would entitle him to a judgment as a

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[4] See also Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 217 (1974); Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-82-17, 15 NRC 593, 595 (1982).

[5] Adickes v. S. H. Kress & Co., 398 U.S. 144, 157 (1970); Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 752-54 (1977); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), LBP-81-48, 14 NRC 877, 883 (1981).

[6] Adickes, supra, 398 U.S. at 157 (1970); Pennsylvania Power & Light Co., et al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-81-8, 13 NRC 335, 337 (1981).

matter of law. Mutual Fund Investors, supra, 553 F.2d at 624. The opponent must make a substantive and specific factual showing (demonstrating that a genuine and material issue of fact exists which is worthy of adjudication) if the motion is to be defeated. Section 2.749(b) stipulates that

> [w]hen a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his" answer; his answer by affidavits or otherwise . . . must set forth specific facts showing that there is a genuine issue of fact.

F.R.C.P 56(e) contains virtually identical language. Thus at this stage in the proceeding, mere allegations are insufficient to establish the existence of an issue of material fact. The opposing party is not "entitled to go to trial on the vague supposition that something may turn up." 6 Moore's Federal Practice ¶56.15[5]. See First National Bank of Arizona v. Cities Service Co., 391 U.S. 253, 289-90 (1968) (F.R.C.P. 56 should not be read to permit parties to "get to a jury on the basis of the allegations in their complaints, coupled with the hope that something can be developed at trial in the way of evidence to support those allegations . . . .")

Moreover, the facts set forth in opposition to the motion[7] must be presented in an appropriate form. Conclusions of law and mere arguments are not sufficient.[8] Rather, the facts asserted by the

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[7] "All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party." 10 C.F.R. §2.749(a).

[8] Kung v. Fom Investment Corporation, 563 F.2d 1316, 1318 (9th Cir. 1977); Citizens Environmental Council v. Volpe, 484 F.2d 870, 873 (10th Cir. 1973); Gulf States Utilities Co., supra, LBP-75-10, 1 NRC at 248.

opposing party must be material[9] and of a substantial nature,[10] not frivolous, conjectural nor merely suspicions.[11] One cannot avoid summary disposition

> on the mere hope that at trial he will be able to discredit movant's evidence; he must . . . . be able to point out to the court something indicating the existence of a triable issue of material fact. [6 Moore's ¶56.15(4)].

Both F.R.C.P. 56(e) and 10 C.F.R. §2.749(b) contemplate that motions for summary disposition may be accompanied by supporting affidavits. Section 2.749(b) requires that such affidavits "shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to tesify to the matters stated herein." F.R.C.P. 56(e) contains essentially identical language.

The purpose of these provisions is to limit the content of the affidavits to evidentiary matter which would be admissible if the affiant were on the witness stand. In federal practice, affidavits containing statements made merely "on information and belief" will be disregarded because the affidavit must reflect the personal knowledge of the affiant.[12] Similarly, in NRC practice affidavits said to be "true to best of my

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9 British Airways Board v. Boeing Co., 585 F.2d 946, 952-53 (9th Cir. 1978) ("[I]f the factual dispute is immaterial, it cannot be held to bar the granting of summary judgment."); Gulf States Utilities Co., Id.

10 Southern Distributing Co., Inc. v. Southdown, Inc., 574 F.2d 824, 826 (5th Cir. 1978) ("[A] pretended issue, one that no substantial evidence can be offered to maintain, is not genuine."); Gulf States Utilities Co., Id.

11 Stevens v. Barnard, 512 F.2d 876, 878-79 (10th Cir. 1975); Robin Construction Co. v. United States, 345 F.2d 610, 614 (3rd Cir. 1965) (In resisting a motion for summary judgment, it is not enough to rely on suspicions or to "post philosophic doubts regarding the conclusiveness of evidentiary facts."); Gulf States Utilities Co., Id.

12 Carey v. Beans, 500 F. Supp. 580, 583 (E.D.Pa. 1980).

knowledge, information and belief" are insufficient to demonstrate the affiant's competence to testify to the facts in the affidavit. Cleveland Electric Illuminating Co., supra, 6 NRC at 755-56 (1977); Pacific Gas & Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-77-45, 6 NRC 159, 163 (1977). Moreover, hearsay testimony and opinion testimony which would not be admissible at trial may not properly be included in the affidavit, nor may ultimate facts and conclusions of law. 6 Moore's ¶56.22 [1]. In sum, "[c]are should be taken by the trial court to make sure affidavits meet the requirements of Rule 56(e)." Id. This insures that attempts by a party to "create a smokescreen in resisting summary disposition in a case that has no business going to trial" will not succeed. Id. A similar purpose is served when affidavits in NRC proceedings are reviewed by an equally stringent standard.

In sum, if intervenors

> present evidence or argument that directly and logically challenge the basis for summary disposition, creating a genuine issue of fact for resolution by the Board, then summary disposition cannot be granted. On the other hand, if intervenor's facts are fully and satisfactorily explained by the other parties, without any direct conflict of evidence, then intervenors will have failed to show the presence of a genuine issue of material fact. [Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 and 2), LBP ___, December 22, 1982, slip op. at p. 4].

There is an absence of disputed issues of material fact with regard to Palmetto Alliance Contention 6

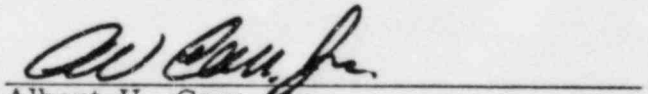
As reflected in the attached "Argument and Documentation" regarding Palmetto Alliance Contention 6, no genuine issue of material fact exists with respect to the allegations made by Messers. McAfee and Hoopingarner. Such is occasioned primarily by Intervenor's lack of

responsiveness to Applicants' and Staff discovery requests. As noted in various pleadings filed by Applicants with this Board, information supplied by Intervenors has been for the most part unresponsive and evasive, consisting basically of unsupported allegations. In that Intervenors must demonstrate the existence of a genuine issue of material fact in order to overcome a motion for summary disposition, its past pattern of behavior must work heavily against it. Simply put, Intervenor's inability to assert facts during discovery should be dispositive of the issue. Only a compelling showing of why subsequently alleged facts (as opposed to unsupported innuendos) could not have been provided in discovery should be permitted to cure Intervenor's deficient responses. These facts are to be presented in affidavit form by a knowledgeable individual.

In addition, Affidavits of various members of Applicants' technical staff provide additional grounds for dismissing the subject contention.

In sum, Applicants respectfully request that their Motion for Summary Disposition be granted.

Respectfully submitted,



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July 15, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
DUKE POWER COMPANY, et al.	)	Docket Nos. 50-413
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ARGUMENT AND DOCUMENTATION IN SUPPORT OF MOTION FOR PARTIAL SUMMARY DISPOSITION OF PALMETTO ALLIANCE'S CONTENTION 6

I. The Contention

Palmetto Alliance's Contention 6 as originally proposed in this proceeding read as follows:

> Substandard workmanship and poor quality control strongly suggest that actual plant construction is substantially below NRC standards in many safety related areas. Applicants have failed to provide a Quality Assurance program which meets the requirements of 10 CFR Part 50, App. B, and no reasonable assurance exists that the plant can operate without endangering the health and safety of the public. The Commission has noted that 'the regulated industry...bears the primary responsibility for the proper construction and safe operation of licensed nuclear facilities.' Federal Tort Claim of General Public Utilities Corp., et al., CLI A1-10, 13 NRC 773, 775-776 (1981). The NRC's Systematic Assessment of Licensee Performance Review Group found the Catawba facility 'Below Average' among power reactor facilities under construction particularly 'in the areas of quality assurance including management and training.' NUREG 0834, NRC Licensee Assessments, August 1981, p. B-1. A number of former Duke Power Company construction workers, including a certified Quality Control Inspector, have complained of systematic deficiencies in plant construction and company pressure to approve faulty workmanship.

In a Memorandum and Order of March 5, 1982, the Board conditionally admitted Contention 6 as proposed but noted that the contention, as drafted, was "at best only marginally acceptable from the standpoint of specificity."

Id. at p. 17. The Board further noted that the contention "can be explored in discovery and we expect the Intervenors to make [it] more specific, or to withdraw [it], following discovery." Id.

In its December 1, 1982 Memorandum and Order, the Board recast Contention 6 and accepted it for litigation in the proceeding. Specifically the Board stated:

> Much of Palmetto 6, which is concerned with substandard workmanship and poor quality control, lacks sufficient specificity. The last sentence, however, concerns alleged "corner cutting" and does supply a sufficient basis for a contention. We recast the contention that we now accept to read as follows:
>
> > "Because of systematic deficiencies in plant construction and company pressure to approve faulty workmanship, no reasonable assurance exists that the plant can operate without endangering the health and safety of the public."

The thrust of this contention is primarily toward alleged company attitudes and practices; proof of this contention, presumably involving specific instances of misfeasance, need not be adduced at the stage.

II. Material Facts As To Which There Is No Genuine Issue To Be Heard

A. The deposition of William Ronald McAfee dated, May 19, 1983, accurately reflects each and every concern he has with respect to Palmetto Alliance Contention 6. McAfee deposition at Tr. 99-100, 114-115.

B. Mr. McAfee's deposition reflects that each and every concern has either been resolved to his satisfaction or cannot be stated, as a matter of fact, to adversely impact upon the safe operation of Catawba.

C. The Affidavits of J. C. Rogers and L. R. Davison demonstrate that the concerns raised by Mr. McAfee do not adversely impact upon the safe construction or operation of Catawba.

D. The deposition of Nolan Richard Hoopingarner, II, dated May 19-20, 1983, accurately reflects each and every concern he has with respect to Palmetto Alliance Contention 6. Hoopingarner deposition at Tr. 107.

E. Mr. Hoopingarner's deposition reflects that each and every concern has either been resolved to his satisfaction or cannot be stated, as a matter of fact, to adversely impact upon the safe operation of Catawba.

F. The Affidavits of J. C. Rogers and L. R. Davison demonstrate that the concerns raised by Mr. Hoopingarner do not adversely impact upon the safe construction or operation of Catawba.

III. Discussion

Palmetto Alliance Contention 6 is now premised in part upon, and was originally admitted based on, allegations of Messrs. McAfee and Hoopingarner. See e.g. Palmetto Alliance Response to Applicants' Interrogatories, April 28, 1982 at p. 12. The depositions of Messrs. McAfee and Hoopingarner taken by Applicants on May 18 and 19, 1983 reflect all their concerns as they relate to Contention 6. The depositions show that, with respect to each concern, neither individual could state that such rendered Catawba an unsafe plant or posed a threat to public health and safety. More specifically, the deposition testimony of each shows that for every concern expressed, such concern was either resolved to the individual's satisfaction before he left the job site, or he was unable to state whether the concern presents a safety problem. Affidavits of J. C. Rogers and L. R. Davison (attached hereto) underscore this point and demonstrate that each concern raised does not affect either the safe construction or operation of Catawba. Under these circumstances Applicants maintain that the concerns of Messrs. McAfee and Hoopingarner should be dismissed from this case.

A. General Discovery on Palmetto Alliance Contention 6 Failed to Raise a Genuine Issue of Material Fact

At the January, 1982 prehearing conference, counsel for Palmetto Alliance was asked to provide background for the Intervenor's assertion in Contention 6 that "a number" of former Duke Power Company employees, including a QC inspector, "have complained of systematic deficiencies in plant construction and company pressure to approve faulty workmanship." Mr Guild replied that "two of the individuals who can bring information to bear on this quality assurance contention, because of their personal experience as former workers of the plant," were Messrs. Hoopingarner and McAfee. (Tr. 117-118). Mr. Guild further stated that both of these individuals "are ready and able to testify about personal knowledge with respect to construction deficiencies, and they are champing at the bit to some degree to explain in detail what their concerns have been." (Tr. 120).

When asked by the Board whether Palmetto Alliance could be more specific in its allegations about quality assurance, counsel for Intervenor stated that he was not then prepared to "go into detail," (Tr. 119) adding that "much of the evidence in the form of documentation" of Contention 6 was in Applicants' possession and that Palmetto Alliance would make its concerns more specific once it had access to such information. (Tr. 120).

Because the allegations in Contention 6 were premised upon the concerns of Hoopingarner and McAfee, Applicants sought to ascertain the exact nature of those concerns, the bases for them, and whether they raised any genuine issues of material fact, by serving upon Palmetto Alliance on April 9, 1982, "Applicants' First Set of Interrogatories and Requests to Produce," which dealt, inter alia, with Contention 6. On April 29, 1982, Intervenor filed "Palmetto Alliance's Responses to Applicants' First Set of Interrogatories and Requests to Produce."

These April 29, 1982 Responses raised no triable issues of fact with respect to Contention 6. Indeed, they contained virtually no substantive information. In answer to interrogatories which sought specific information on alleged deficiencies in plant construction, and examples of alleged "company pressure" to approve "faulty workmanship," Palmetto Alliance frequently asserted (to 30 out of 124 interrogatories) that "Intervenor at present lacks sufficient knowledge to answer" and stated that it was "awaiting responses [from Applicants] to its Interrogatories and Requests to Produce served April 20, 1982 with regard to this subject." In response to a series of interrogatories directed to the "number" of former construction workers at Catawba, Palmetto Alliance again identified Messrs. McAfee and Hoopingarner and, with respect to each, identified certain concerns. However, Palmetto Alliance professed itself unable to provide more specific details respecting their concerns because "access to records in the possession of Duke Power Company sought in discovery requests served April 20, 1982 is necessary to refresh [their] recollection." See, for example, Palmetto Alliance's April 28, 1982 Response to Interrogatory No. 80.

The "records in the possession of Duke Power Company" which Intervenor sought were subsequently provided. Applicants responded to Palmetto Alliance's April 20, 1982 interrogatories on December 31, 1982 pursuant to the Board's December 1, 1982 Order which permitting the resumption of discovery on Contention 6 (suspended since July 8, 1982). The documents identified in those responses were made available to Intervenor for inspection and copying beginning on February 15, 1983. Applicants filed supplemental responses on February 28, 1983 and March 25, 1983; documents identified in these responses were available beginning on March 14, 1983 and March 30, 1983, respectively. During its "right of first discovery" on

Contention 6, Palmetto Alliance received full and responsive answers to each of its interrogatories and document production requests on Contention 6, as they related to the concerns of Messers. McAfee and Hoopingarner (many of which were extremely broad and far-reaching), except for those requests to which Applicants successfully objected.

On April 19, 1983, Palmetto Alliance filed Supplementary Responses to Applicants' April 9, 1982 interrogatories. In response to Interrogatory 80, which asked Intervenor to "provide the specific allegations by each construction worker or other employee on whom you intend to rely in support of your position on this contention," Palmetto Alliance provided no additional information to update the answer which it had filed a year earlier. Intervenor did acknowledge that Applicants had provided certain documents relating to Messrs. Hoopingarner and McAfee's concerns but stated that "[n]either Mr. Hoopingarner nor Mr. McAfee have examined these documents or others yet unknown which may refresh their recollection as to other activities and areas of plant construction for which workmanship is substandard." April 19, 1983 Supplemental Response to interrogatory 5, pp. 4-5. In short, neither Palmetto Alliance's April 9, 1982 Responses nor its April 19, 1983 Supplemental Responses provided sufficient specificity as to Messrs. McAfee and Hoopingarner's concerns to enable Applicants to determine whether these concerns raised any genuine issue of material fact.

The Board supported Applicants' assessment of Intervenor's two sets of interrogatory responses on Contention 6. In its May 13, 1983 Order, the Board stated that "Palmetto's responses to many key questions have been vague, evasive, incomplete or non-existent," and many of its Supplemental Responses "seriously deficient," despite the fact that "Palmetto has been given every reasonable opportunity to develop adequate answers . . ." Id. at 1-2.

Granting Applicants' motion to compel in large part, the Board ruled that "Palmetto must now give complete and detailed answers to those interrogatories as to which we are granting the Applicants' motion . . . . Palmetto must tate factual specifics." Id. at p. 2.

With specific reference to the interrogatories on Contention 6, the Board stated:

> Palmetto is to answer these questions and supply specifics about any other areas of the plant which it contends include faulty workmanship, such that the plant cannot operate safely. If Palmetto does not provide any significant additional information in response to these questions, the Board will entertain a motion to revise Contention 6 to include only the matters on which Messrs. Hoopingarner and McAfee have information and new matters first surfacing at a later date. [Id. at p. 5].

Granting Applicants' motion to compel further responses to certain interrogatories relating to the concerns of Hoopingarner and McAfee, the Board noted that the answers provided had frequently referred to Intervenor's initial responses to interrogatories 5 and 80, which were themselves "not sufficiently specific." Id. at p. 5. However due to "the prominence of Messrs. Hoopingarner and McAfee in this contention" and to time constraints, the Board did not order responses on these initial questions. Rather, the Board directed Palmetto Alliance to make its two witnesses available for depositions, and warned that "[f]ailure on their part to appear and respond fully to questions could result in exclusion of their testimony in any later hearing." Id. at pp. 5-6. Given the Board's direction, the only way left to Applicants to determine the significance of the matters, and the specifics underlying them, raised by Hoopingarner and McAfee was through their deposition testimony. Having been provided with only the most general assertions as to the nature of Messrs. Hoopingarner and McAfee's concerns up until that time, Applicants anticipated that in these depositions, McAfee and Hoopingarner

would clarify the specific factual bases for their concerns and would indicate the extent to which these concerns were supported by documents obtained from Applicants during discovery. The language of the Board's May 13 Order indicates that it, too, expected detailed information to be forthcoming[1]; after instructing the Intervenor to make available its two witnesses, the Board further stated with respect to interrogatory 82 or Contention 6:[2]

> Now that discovery is coming to a close, Palmetto is under an obligation to review all of the information that has been provided to it at its request, to decide what specific pieces of information it intends to rely on, and to tell the other parties specifically what it is. Any information not so revealed and which is known or should have been known at this time may be excluded from a later hearing over timely objection. May 13 Order at p. 7.

However, a review of the depositions of Messrs. Hoopingarner and McAfee reveals that these two individuals were not only unable to provide specific information on alleged instances of poor quality control or substandard workmanship which they contend remain uncorrected,[3] but that they had not

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[1] Counsel for Palmetto Alliance, however, took the position at deposition that the Intervenor was not obligated to "have reviewed materials that are available," decide what specific information it intended to rely upon, and inform the other parties specifically what such information consisted of until its further interrogatory responses were due on May 31, 1983. [McAfee deposition, pp. 60-612, 62-63]. As will be demonstrated below, this specific information was not provided in the depositions or in Palmetto Alliance's May 31, 1983 Responses.

[2] This interrogatory stated: "Besides the statements of those construction workers or other employees, is there any other information on which you intend to rely in support of their allegations? If so, please identify."

[3] As to the problems he observed in construction or quality control, Mr. McAfee testified either that such had been corrected or that he did not know whether they remain uncorrected. See McAfee deposition at p. 73-74, 82-83, 85-91, 93, 95. Mr. Hoopingarner was similarly unable to substantiate allegations of deficient work left uncorrected. See Hoopingarner deposition at pp. 50-51, 58, 58-59, 71.

even reviewed documents provided to Palmetto Alliance by Applicants on discovery. Despite the statements of Intervenor's counsel at the January, 1982 prehearing conference about these witness' personal knowledge and eagerness to testify, despite Palmetto Alliance's assertion in its April 28, 1982 interrogatory responses that access to documents in Applicants' possession was needed to refresh the witness' recollections, and despite the Board's direction to Palmetto Alliance to review discovery information and indicate which documents it relies upon, Mr. Hoopingarner testified as follows in his deposition:

> Q. Are you aware that Palmetto Alliance in addition to seeking written responses also sought documents from the applicant?
> A. Yes, sir.
> Q. Were you aware those documents were housed here at the Duke Power Company Building in the legal offices?
> A. Yes, sir.
> Q. Were you asked to review those documents?
> A. If had time.
> Q. Did you come down to Duke Power Company and review those documents.
> A. No, sir.
> Q. Have you seen any copies of those documents?
> A. I think I have seen a few.
> Q. Let me ask you this question. Has anybody said, "Here's some documents that we got from Duke Power Company, and I would like for you to review them."
> A. No, sir.
> [Hoopingarner deposition, Volume II, p. 34.]

In addition, Mr. Hoopingarner testified that he had not seen any of Applicants' Supplemental Responses (filed February 28, 1983), to interrogatories (Id., p. 32), that he was not aware of documents sent to Palmetto Alliance on April 12, 14, and 29, 1983 (Id., p. 33), that he did not assist in the preparation of Palmetto Alliance's April 19, 1983 Supplemental Response to Applicants' Interrogatories (including Interrogatory 80) (Id., pp.

29-30),[4] and that he was never asked by Palmetto Alliance whether he had any documents relevant to his concerns (Id., p. 4).

Similarly, Mr. McAfee testified that he did not assist in the preparation of Palmetto Alliance's April 29, 1983 Responses to Applicants' interrogatories, including interrogatory 80 (McAfee deposition, p. 44), that he was not aware of Applicants' various responses to Palmetto Alliance's followup interrogatories (Id., pp. 49, 50, 64), and that he had not seen the documents provided to Palmetto Alliance during April, 1983 (Id., pp. 63-64).

Mr. McAfee further indicated that he had made only one visit, of approximately three hours duration, to the document room at Duke Power Company to review documents in search of evidence to support his allegations and the broader allegations contained in Contention 6. (Id., pp. 51-53). He stated that the documents which he had found so far "don't directly deal with me in my personal concerns as an employee", but were relevant to Contention 6's general concern with the Catawba QA program. (Id., p. 56) Other than indicating that these documents involved welding inspectors' "complaints to supervision" and some "notices of violation", Mr. McAfee was unable to supply any specifics or otherwise reveal what documents he was referring to. (Id., p. 58).

This testimony, in conjunction with Mr. McAfee's inaccurate and unfounded assertion that Palmetto Alliance had not then received "most of

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[4] While Mr. Hoopingarner was examined concerning his assistance in preparing additional answers to interrogatories, Mr. Guild responded "If it won't hurt, counsel, I will help respond to the question." Counsel nor Palmetto Alliance neither sought Mr. Hoopingarner's assistance with this set of interrogatories." Id., p. 30. .

the copies we requested yet" (Id., p. 52) and that he was not aware of the documents sent to Palmetto Alliance during March, April and May, 1983, demonstrates that his review of documents was cursory at best[5], and that he had failed to discover any documents supporting his allegations.

In the "Further Supplementary Responses" which it filed on May 27, 1983, Palmetto Alliance provided no additional information pertinent to the specific concerns of Messrs. Hoopingarner and McAfee.[6] Rather, Intervenor appeared to take the position that the depositions of these individuals, which contain "[d]etailed information as to evidence on this contention known to those identified potential witnesses", reflected all of the information known to them on their particular concerns. (See May 27, 1983 Further Supplementary Responses, p. 3. Although one relevant sentence is garbled, Applicants believe that they have fairly represented Intervenor's remarks.) Palmetto Alliance also stated in this pleading that it "has no knowledge at this time of specific uncorrected faulty workmanship of safety significance at Catawba; but believes that the existence of such faulty workmanship is strongly indicated by the deficient Quality Assurance Program...". Id., p. 6.

The history of discovery on this aspect of Contention 6 demonstrates that, with respect to the concerns of Messrs. Hoppingarner and McAfee, the contention fails to raise a single specific issue which should be litigated in this proceeding. Fourteen months ago, in their April 9, 1983 interrogatories,

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[5] Mr. Mcafee testified that he did read Applicants' December 31, 1982 Responses to Palmetto Alliance's interrogatories "once." McAfee deposition, p. 49.

[6] See the Memorandum and Order of June 20, 1983, wherein the Board declined to address Palmetto Alliance's Further Supplementary Responses on Contention 6 point by point because "[a]part from welding, those responses were not merely insufficient, they provided no information at all." ID. at p. 9.

Applicants sought to determine whether any genuine issues of material fact underlay the unsubstantiated allegations of those two individuals. In their answers of April 29, 1982, Palmetto Alliance avoided providing any specific detail by asserting that Hoopingarner and McAfee needed to review documents and information in Applicants' possession in order to refresh their recollections.

This assertion now rings false, however. After being afforded every possible opportunity to obtain the information necessary to support Hoopingarner and McAfee's concerns (including a unilateral "right of first discovery" which gave it timely access to relevant documents and information), Palmetto Alliance filed a one year later - on April 20, 1983 - a Supplemental Response to this interrogatory which provided no further information whatsoever. Moreover, Palmetto Alliance offhandedly noted in these Supplemental Responses that Hoopingarner and McAfee had not yet reviewed the numerous documents made available to Intervenor on discovery, despite earlier representations in their initial interrogatory responses that such documents were crucial to Messrs. Hoopingarnor and McAfee's case.

Despite the specific admonitions of the Board, the depositions of these two individuals reveal that their concerns are no more specific now than they were when Contention 6 was filed. Mr. Hoopingarner indicated that he had not reviewed any documents made available through discovery to bolster his assertions. Mr. McAfee indicated that he had reviewed discovery documents once, for a period of about 3 hours, but was unable to provide a single specific reference to any document. While such generalized concerns and unsupported allegations may be sufficient to warrant admission of this contention under 10 C.F.R. §2.714, it is clear that these assertions fail to raise any genuine issue of material fact for resolution by the Board.

Applicants accordingly urge that their Motion for Summary Disposition as to this aspect of Contention 6 be granted.

B. The Depositions of Messrs. McAfee and Hoopingarner Fail to Disclose a Genuine Issue of Material Fact[7]

It was Applicants' intention in taking the depositions of Messrs. McAfee and Hoopingarner that each and every concern they had with respect to Contention 6 be enunciated. Both gentlemen stated that the deposition reflected each and every concern they had with respect to Contention 6. See McAfee Deposition ("MD") at Tr. 99-100, 114-115; Hoopingarner Deposition ("HD") at Tr. 107. These concerns are discussed individually below.

1. McAfee Deposition

a. Pouring concrete in rain

Mr. McAfee alleged that:

> I witnessed concrete poured in downpours of rain with no rain protection. As I said, I was pre-pour runner. I went up to the pour, the concrete on the Reactor Building One containment. The concrete had too much water in it by anyone's reasonable standards. It didn't look like concrete. It had water floating on top of the concrete...[MD Tr. p. 12].

However, Mr. McAfee acknowledged that "I'm not a concrete inspector "(MD Tr. p. 13) and thus by his own admission he is not in a position to pass judgment on this matter with regard to a potential impact on the public health and safety. In any event, as the Affidavit of Mr. Davison shows, specifications and procedures exist for pouring concrete in the rain without affecting its integrity. Records reflecting concrete pours in the area described, at the time described, and under the weather conditions described,

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[7] Applicants have directed the Court Reporters to serve copies of the depositions of Messers. McAfee and Hoopingarner upon the Board.

reflect that concrete poured was acceptable and thus there is no concern with respect to its integrity. (Davison affidavit, paragraph 4.) Accordingly, it cannot be said that a genuine issue of material fact exists with respect to this allegation.

b. QA waiver of requirements on concrete forms

Mr. McAfee alleged that:

> on occasion the QA Department, which at that time was separate from the QC Department, waived requirements on concrete forms in order to let the Construction Department make the pours, even though the requirements were not met. [MD Tr. p. 13]

In exploring this concern, the following colloquy ensued:

> Q. With respect to QA waive requirements on concrete forms to let construction make pours, what are you specifically referring to there, what incidents?
>
> A. Well, I was trying to get a [pour] signed off one day. Construction was very eager to make the pour, but one of the Q. A. Engineers was holding the pour up due to some requirements which I'm not familiar with. I wasn't familiar with it at that time, and I guess he would have been the junior Q. A. Engineer said, "Well, we can wiave the requirements." [MD Tr., pp. 73-74]

However, Mr. McAfee was unfamiliar with the requirements in question (MD Tr. 74) and was unable to state as a fact whether it was appropriate for the requirements to be waived. MD Tr. p. 74. Further, Mr. McAfee could not recall the area of the plant or the Q. A. individual involved. MD Tr. p. 74. In any event, Mr. Davison, in his affidavit, points out that, under certain circumstances, requirements can be waived. (Davison affidavit, at paragraph 5.) Certainly, without more than the bare allegation raised by Mr. McAfee, there is no reason to believe that such waiver, if indeed there was one, was improper. Therefore there is no reason to conclude that this concern of Mr. McAfee relates to the health and safety of the public, and a genuine issue of material fact has not been raised.

c. Deficient construction

Mr. McAfee alleges that:

> a lot of work and very large percentage work, not a major, but a large percentage of work which was not done correctly the first time because the construction personnel were not, in many cases, informed how to do the work.
>
> There are construction procedures which the construction craft people are supposed to follow. For instance, in installing anchor bolts, we got lectures on the construction procedures. Unfortunately, apparently the craft people did not, whereas we knew how to install them from our inspections. In the cases, the craft people did not know how to install the. [MD Tr. p. 13]

In support of this allegation Mr. McAfee makes reference only to installation of anchor bolts. Specifically Mr. McAfee stated:

> it was a common problem that not so much in my experience alone, but in the experience of other inspectors, that they witnessed a lot of anchor bolts with just one put in correctly according to the construction procedure and according to the criteria we had to inspect by. [MD Tr. p.79]

However, Mr. McAfee stated that "by the time I became certified a great deal of the problem had been corrected." MD Tr. p. 79.

With respect to anchor bolts that he was responsible for inspecting, Mr. McAfee could only reference one anchor bolt that he believes may have been improperly installed. MD Tr. p. 83. As to this single anchor bolt, Mr. McAfee stated:

> In one particular case I went down to inspect a cable tray support in Reactor Building One Pipe Checks. We were told by the Welding Foreman, Cecil Cox, these cable tray supports were finished and ready for inspection. We went down to inspect them and found an anchor bolt which we could not verify the length of. As a result of that we went back up to the Quality Control Shack and mentioned that we were naturally going to write an NCI on it.
>
> One of my supervisors, Jim Allgood, told me to wait a minute, he wanted to check it out. He went down and checked it out and said he could determine a marking on it. I said "Well, if you can determine a marking on it you sign it; you are certified." At that point he said "Well,

> we will do an x-ray or radiograph or whatever." So I said "Fine."
>
> The next day I was told that the test had been done and that the anchor bolt was, in fact, long enough.
>
> Q. It was or was not?
>
> A. It was; when I asked to see the evidence I was told on no uncertain terms that I was a smart ass. And I have yet, to this day, to see any evidence that that concrete anchor bolt is the length it is supposed to be. [MD Tr. pp. 13-14]
>
> See also MD Tr. pp. 80-82.

Mr. McAfee was unable to state whether Mr. Allgood had the authority to resolve the matter. MD Tr., p. 100. More importantly, Mr. McAfee stated that he did not know whether the anchor bolt was ever verified as to its length or whether it was ever corrected if it was not long enough. MD Tr. p. 14.

The record is clear, as Mr. McAfee acknowledged, that there is no problem with repairing anchor bolts which may have been improperly installed. MD Tr. p. 83. However, as the Affidavit of J. C. Rogers states, an ultrasonic test was performed on the anchor bolt in question. This test was performed by qualified personnel and was found to be acceptable. (Rogers Affidavit at paragraph 13.)

Mr. McAfee could not state as a fact that any other anchor bolts were presently improperly installed. MD Tr., p. 83.

In sum, Mr. McAfee has not presented a material fact to support the allegation.

d. Poor document control

Mr. McAfee alleges that he

> was very concerned about important document control or inadequate document control, I should say, in that quite often we went down to inspect work which was done on the basis of superceded prints, prints that have been revised.

> These prints were never supposed to have been in the field unless they were superceded; and that is the best of my recollection at this time. [MD Tr., p. 15]

See also MD Tr., p. 83-84.

When queried as to support of this allegation, Mr. McAfee could make reference to only one incident. MD Tr., p. 84, 86. Moreover, Mr. McAfee acknowledged that the situation was corrected to his satisfaction while he was employed at Catawba. MD Tr., pp 85-86, 93.

Therefore, to the extent this allegation by Mr. McAfee had any substance, the deposition record reflects that the matter was resolved. Thus it must be concluded that Mr. McAfee has failed to present an issue of material fact with respect to this allegation.

e. Rain in control room

Mr. McAfee alleges that

> there was an instance of the control room roof raining. This was while I was inspector. Another inspector NCIed the entire control room because the control room boards got soaking wet because of rain because the roof above the ceiling had not been sealed, and when it rained water stood on the roof, seeped through the concrete, and leaked all over the control board. That was a matter of concern. I was not directly related to that because another inspector, in fact, wrote the NCI. [MD Tr., p. 17]

See also MD Tr., pp. 86-88.

Mr. McAfee acknowledges that the control room was not within his jurisdiction b' t rather within the jurisdiction of another inspector. MD Tr., p. 86. Mr. McAfee stated that this inspector "red tagged the control room board" (MD Tr., p. 86) which means that "no work should be done on this equipment until the NCI was resolved." MD Tr., p. 88. With respect to the NCI, Mr. McAfee stated that one was written up and that corrective action was recommended and taken. MD Tr., p. 88.

Importantly, Mr. McAfee could not say if the rain water had any adverse impact on the equipment in the control room. MD Tr., p. 87. He stated his view that the equipment should be checked and reviewed by QC prior to operation in order to assure protection of public health and safety. MD Tr., pp. 87-88.

The Affidavit of Mr. Davison demonstrates that, to resolve the NCI which was written, the Control Room was inspected and appropriate corrective action was taken, such that water leakage onto the Control Room boards will not affect their ability to perform their intended function. (Davison Affidavit, paragraph 6.) As such, Mr. McAfee's concerns are satisfied, and he has failed to present a material fact which warrants consideration in an adjudicatory hearing.

f. Protection of cables

Mr. McAfee alleges that

> I was walking through the plant. We were just beginning to pull cable at Catawba. We had specific regulations that said these cables had to be protected when they were pulled. They had to be hung up and kept out of any danger of being damaged. It wasn't uncommon to go around and see cables which had been cut down, cables which had walk boards laying on them, cables which were being walked on, cables which were in the water. [MD Tr., p. 18]

See also MD Tr., pp. 88-89.

Mr. McAfee stated that as a result of the described situation, he contacted the electrical foreman and got them to maintain proper storage. MD Tr., pp. 89-90. Mr. McAfee stated that the situation was corrected and that he was satisfied with the correction. MD Tr., p. 90.

Mr. Davison in his affidavit explains that cables are inspected to assure there is no damage. In the event of a defective cable,

such will be resolved prior to operation, thereby assuring the protection of the public health and safety. (Davison affidavit, at paragraph 7.)

In light of the fact that Mr. McAfee's concern was resolved to his satisfaction, and that in any event all circuits are tested before operation to insure functionality, and that defective cables will be placed before operation, Mr. McAfee's has failed to raise an issue of material fact and this allegation should be dismissed.

g. Welding inspector stress

Mr. McAfee alleges that he

> was very concerned about the work load of the welding inspectors because they were under a great deal of stress from the craft and from craft supervision to get the job done, or at least to get the okay on the job, whether the job is actually done correctly or not. I witnessed this as a pre-pour runner having to deal with welding inspectors and being in the inspection group.
>
> I talked with welding inspectors and saw some of what they went through in having to deal with the craft supervision. [MD Tr., p. 20]

See also MD Tr., pp. 90-91.

Mr. McAfee stated that he was not a welding inspector and he did not know if stress caused welding inspectors to fail to do their job. MD Tr., pp. 90-91. With respect to any specific incidents of conflict, Mr. McAfee was unable to identify either the welder or the welding inspector. MD Tr., p. 91. Significantly, Mr. McAfee states that he did not know, as a fact, of any welds that were left uninspected. MD Tr., pp. 91-92.

Mr. McAfee stated that with respect to his inspection responsibilities, welds came into play only if something he was inspecting had a weld on it. MD Tr., p. 91. In that instance he verified that weld had been properly inspected. MD Tr., pp. 91-92. This eliminates any public health and safety concern by Mr. McAfee with respect to knowledge of welding

deficiencies. Therefore, any concern which Mr. McAfee has with respect to welding fails to raise an issue of material fact and should be dismissed.

h. Inadequate QA inspection training

Mr. McAfee alleges that he

> was concerned that my training for Quality Control Inspector was carried out in what I considered to be a second-hand manner in that a person training us was receiving his instruction or instruction from another person who was in charge of the Quality Assurance at the Cherokee Station at that time.
>
> I never met the man, although he signed my certification paper. That concerned me. [MD Tr., p. 20]
>
> See also MD Tr., pp. 92-93.

Mr. McAfee could not state that his training was improper or inferior; rather, he was simply concerned that the person who was instructing him at Catawba was being given instructions on how to instruct from a Duke employee at Duke's Cherokee facility. MD Tr., pp. 92-93.

Mr. Davison, in his affidavit, explains that Mr. McAfee was trained as a QA electrical inspector by a highly qualified electrical engineer. This individual was delegated the performance of this training function by the QA Department's designated qualifying individual. This delegation of training was allowed by QA Procedure J-1, Revision 5, ¶4.3.2. Mr. Davison states that such training was full and complete, and thus consistent with the protection of public health and safety. (Davison affidavit at paragraph 8.) Therefore Mr. McAfee's allegation fails to raise an issue of material fact and should be dismissed.

i. Instructed not to write non-conforming incidents (NCI's)

Mr. McAfee alleges that he

> was told not to write NCI's although as an inspector I was required by law, I believe. [MD Tr. p. 23]

Aside from the single anchor bolt matter discussed in item c. above, Mr. McAfee could not describe any other specific instance where he was told not to write an NCI. MD Tr., p. 23. As the discussion in item c. above reflects, an NCI was not warranted, given the fact that Mr. McAfee's supervisor documented the correctness of the bolt, and that tests had demonstrated the anchor bolt was properly installed.

Mr. McAfee did discuss situations wherein, in lieu of writing an NCI, his supervisor suggested that the matter should be discussed with the craft foreman (MD Tr., p. 23) and stated:

> As it turned out, in some cases it was much more effective as far as getting the problem resolved to go talk to the craft foreman because in some instances he would go correct the problem without going through the paper work of the NCI. [MD Tr., p. 24]

With respect to specific instances wherein Mr. McAfee alleges he was encouraged to resolve the matter with the craft, Mr. McAfee states that he inspected 27 cable tray supports and found that 7 appeared to require an NCI. MD Tr., p. 26. Mr. McAfee explained that he resolved them by talking with the craft foreman, but asserts that he believes he should have written an NCI. Id. Interestingly, however, Mr. McAfee admits that as a result of talking to the craft foreman: (1) the craft foreman agreed to correct the 7 items; (2) the craft foreman did correct the 7 items; (3) Mr. McAfee subsequently inspected these 7 items; and (4) Mr. McAfee was satisfied. MD Tr., p. 27.

Another specific instance where Mr. McAfee alleges he was encouraged to discuss and resolve the matter with the craft foreman, rather than to write an NCI, involved cable tray support grids. MD Tr., p. 29. However, again Mr. McAfee acknowledges that the matter was corrected and he was satisfied. MD Tr., p. 29.

A third example of encouragement to discuss a matter with the craft foreman involved cable tray hangers and supports. MD Tr., pp. 29-30. Again, Mr. McAfee acknowledges that the matter was corrected to his satisfaction. MD Tr., pp. 30-31. See also MD Tr., pp. 119-120.

Therefore, based on the above discussion it can be seen that each of Mr. McAfee's concerns with respect to being "told" not to write NCIs has no technical basis nor merit. Thus, this concern of Mr. McAfee fails to raise an issue of material fact and should be dismissed.

j. Blue-print changes to reflect construction error

Mr. McAfee alleges that "blueprints were changed to reflect construction errors." MD Tr., p. 37. See also MD Tr., pp. 38-43. In elaborating upon this allegation, Mr. McAfee states

> On certain occasions we would go to inspect the cable tray supports, cable tray hangers and all the cable tray supports, or I should say most of them, were seismically braced. We found several instances in which seismic bracing was not run in the direction the print called for it to be run.
>
> We would, usually on this our procedure was to talk to the Technical Support engineers, and generally the resolution to this was that Design Engineering would revise the blueprint to reflect the change in direction of the seismic bracing.
>
> And I will add that it was my understanding that seismic bracing ran pretty much a continuous system. In other words, you didn't brace all of them in one direction. You would alternate the direction of bracing and so forth. [MD Tr., p. 37]

Mr. McAfee acknowledges that

> Design Engineers design the plant, and if the blueprint or design needs to be changed, then it is their responsibility. [MD Tr., p. 40]

Mr. McAfee further acknowledges that "in most instances" Design Engineering (the group with the final judgment in this matter [MD Tr., p. 43]) made the

judgment that the blueprints should be changed pursuant to relevant criteria. MD Tr., p. 40.

Mr. McAfee stated that he had to be satisfied with the resolution (MD Tr., p. 41) but was concerned that a possiblity existed that the seismically braced cable trays or cable hangers would not perform the function they were supposed to perform. MD Tr., p. 41. However, when pressed for supporting details, Mr. McAfee referred to "conversations with engineers." MD Tr., pp. 42-43. Mr. McAfee was unable to name the engineers and acknowledged that he did not talk to them often. MD Tr., p. 43. Importantly, Mr. McAfee admitted that no engineer that he spoke with stated that the specific revised blueprints were improperly revised. MD Tr., p. 43.

Mr. Rogers explains in his affidavit that all blueprint changes are handled in accordance with QA Procedure R-3 or initiated by Design Engineering. No print changes are incorporated without Design Engineering evaluation and approval. (Rogers Affidavit at paragraph 14).

Therefore, based on the fact that Mr. McAfee acknowledges that changes, where made, were to the best of his knowledge made by the proper persons based on the proper criteria, and in light of the statement in Mr. Roger's affidavit, this allegation of Mr. McAfee fails to raise an issue of material fact and should be dismissed.

k. Welding inspector sign-off

Mr. McAfee alleges that he

> was concerned about the difficulty we had in getting welding inspectors to sign the pour sheets. [MD Tr., p. 71]

Expanding on his point Mr. McAfee stated:

> Well, before the concrete could be poured, if like I said, a weld was going to be covered by concrete it had to be inspected, and the inspector had to okay it. The difficulty was perhaps twofold in that it was hard to tell at time which inspector was responsible for which welds; and whereas we might be referring to one inspector, he would say no, that's another fellow's responsibility.
>
> And it seemed like the old run around where you had to track down the right inspector, and even though it might, two [pours] might be in the exact same area, two different inspectors may have responsibility. [MD Tr., p. 75]

However, despite difficulty, Mr. McAfee acknowledges that he was eventually able to track the inspectors down and get them to sign-off. MD Tr., p. 75. Therefore this concern of Mr. McAfee's is shown to have no basis. It raises no material fact and should be rejected.

l. Impact of unstable scaffolding on welding and welding inspection

Mr. McAfee alleges that defective or improperly installed scaffolding impaired his inspection effort. MD Tr., pp. 93-94, 10. However, despite the condition of the scaffold, Mr. McAfee was able to "get a ladder, shove up a scaffold, or whatever I had to do to verify it." MD Tr., p. 94. As a result, Mr. McAfee acknowledged that eventually he completed his inspection and satisfied himself the work was properly performed, or, if not, that appropriate action was taken. MD Tr., pp. 94-95. Therefore this allegation has no bases, fails to raise any issue of material fact, and should be rejected.

m. Inadequate testing of QA electrical inspector candidates

Mr. McAfee alleges that

> the testing was inadequate because basically we were the net -- well, how can I put it -- it was as if, almost as if were told what the test was going to be. In other words these are the questions.
>
> It wasn't quite that blatant, but it was almost that blatant; and I consider that, as somewhat of an educator, to be an

> inadequate form of testing if you want to find out what the individual knows about the given subject matter. [MD Tr., p. 95]

Mr. McAfee does not allege that he was given specific questions in advance, rather he agrees with the characterizations that the instructor said "here [are] the type of questions you are going to get." MD Tr., pp. 97-98. Mr. McAfee acknowledged that the certification tests properly measured his ability to become a certified inspector and with the exception of one individual (Richard Bunton) properly measured the ability of all individuals in his class to become certified inspectors. MD Tr., p. 96. Mr. McAfee also acknowledged that testing was only one part of the certification process [MD Tr., p. 95] and came after months of on the job training. MD Tr., pp. 95-97. It appears that Mr. McAfee's real concern in this area is that Mr. Bunton was certified. MD Tr., p. 98. Mr. McAfee does not think Mr. Bunton possessed the knowledge to be certified. MD Tr., p. 98.

As the affidavit of L. R. Davison indicates, the most important part of the information given in classes to inspectors is what they will use every day during the inspection process. Items such as what to inspect, how often to inspect, and acceptance/rejection criteria are stressed. These items were emphasized in classes as important items to know, and also constituted the majority of the test questions. Simply put, testing was reflective of the major points emphasized in the training program. Mr. Davison states that training and testing was proper and that neither Mr. McAfee nor members of his class were given questions in advance. Davison Affidavit at paragraph 9.

With respect to Mr. Bunton, Mr. Davison states that, based upon years of on the job evaluation, Mr. Bunton is considered knowledgeable of requirements and has the respect of craft personnel as

someone who knows what he is doing. Davison affidavit at paragraph 9. As the foregoing discussion demonstrates, Mr. McAfee has failed to raise any issue of material fact with respect to this allegation, and it should be dismissed.

n. Conclusion

In conclusion, Applicants maintain that Mr. McAfee has failed to present any material fact in support of Palmetto Alliance's Contention 6 as to which there is a genuine issue. Rather, the deposition record reflects that most concerns have been resolved. As to the remaining concerns Mr. McAfee was unable to state that safe operation of Catawba would be affected. Applicants maintain that the Affidavits of Messrs. Davison and Rogers demonstrate there is no substance to Mr. McAffe's allegation. Absent signed affidavits presenting material facts with refute the affidavit of Messrs. Davidson and Rogers, Mr. McAfee cannot be said to be raising material facts as to such matters. For all the above reasons Mr. McAfee's concerns should be dismissed from this proceeding.

3. Hoopingarner Deposition

a. Electrical cables

Mr. Hoopingarner alleges that cables were left unprotected after coming out of cable trays; that they were laying in water, that people walked on cables and dropped boards and pipe on cables. HD Tr. Vol. 1, pp. 19, 20, 33-35; Vol. 2, pp. 10, 67. However, Mr. Hoopingarner could not state as a fact that unprotected electrical cables render the operation of Catawba unsafe. HD Tr. Vol 2, pp. 17-18. In any event, electrical cable at Catawba is armored to prevent damage, and cable is tested prior to operation. In the affidavit of Mr. Davidson, he states that in the event tests or inspections uncover damaged cable such will be resolved before operation,

assuring maintenance of the public health and safety. (Davison affidavit paragraph 7)

Therefore it can be seen that the allegation of Mr. Hoopingarner fails to raise an issue of material fact, and it should be dismissed from the proceeding.

b. Improper welding procedures

Mr. Hoopingarner alleges that a welder, contrary to procedures, used a wet or damp rag to quench a weld. HD Tr. Vol 1, pp. 11, 22; Vol. 2, pp. 28, 70-71. However, Mr. Hoopingarner confirmed that he was not knowledgable in welding (HD Tr. Vol. 2, p. 71); did not know if the weld was inspected or approved (Id. at p. 70); and did not know, as a fact, whether these welds were good or bad welds. Id. at p. 71.

In any event, as Mr. Rogers states, the practice referred to above is presently allowed by the welding program for stainless steel pipe and thus public health and safety cannot be said to be compromised. (Rogers affidavit, paragraph 12) Therefore it can be seen that the allegation of Mr. Hoopingarner fails to raise an issue of material fact and it should be dismissed from the proceeding.

c. Improper welding

Mr. Hoopingarner alleges that improperly constructed scaffolding resulted in some doing deficient work. welders. HD Tr: Vol. 1, p. 13; Vol. 2, pp. 5, 7, 9, 11-13. However, Mr. Hoopingarner, acknowledging that he was not a welder (HD Tr. Vol 2, p. 61), was unable to state if the subject welds were proper or improper welds. Id at pp. 13, 61.

Mr. Davison states in his affidavit, that all safety related welds are inspected and corrective action is taken as necessary. (Davison affidavit, paragraph 10.) Accordingly, it cannot be said that

Mr. Hoopingarner has raised a matter of concern to the public health and safety. Mr. Hoopingarner has failed to raise an issue of material fact and his allegation should be dismissed.

d. Pressured not to talk to NRC

Mr. Hoopingarner alleges that he and others were instructed or pressured not to bring safety concerns to the NRC's attention. HD Tr Vol 1, p. 18; Vol. 2, pp. 6, 8, 70-71. However, Mr. Hoopingarner admits that his supervisors "withdrew that direct order that they gave me pertaining to I can't approach the NRC man." HD Tr. Vol. 1, p. 18. In addition, Mr. Hoopingarner acknowledges that he was not prevented from going to the NRC with concerns (HD Tr. Vol 2, p. 71) and in fact spent several hours walking through the plant with an NRC inspector. HD Tr. Vol. 1, p. 19. Further, Mr. Hoopingarner was unable to state whether such alleged pressure prevented others from making statements to NRC. Id. at p. 72. Accordingly, it cannot be said that Mr. Hoopingarner has raised a material question of fact with regard to this matter.

e. Water in UHI Building

Mr. Hoopingarner raises a concern about "green water" standing in the UHI Building. HD Tr. Vol. 1, p. 19; Vol. 2, pp. 66-67. However, when asked the direct question of whether "green water in UHI Building" is going to result in an unsafe operating condition, Mr. Hoopingarner responded "It's doubtful." HD Tr. Vol. 2, pp. 66-67.

Mr. Rogers explains that water was standing in the bottom of the blow out chambers of the UHI Building because the chambers are open to the atmosphere during construction and collect rainwater. The chambers are equipped with floor drains to carry excess water to yard drainage. This is not an unsafe condition. (Rogers Affidavit, paragraph 4.)

Because the situation as described by Mr. Hoopingarner is not out of the ordinary, this matter does not raise a public health and safety concern. Mr. Hoopingarner's allegation fails to raise an issue of material fact and thus should be dismissed.

f. Scaffold boards improperly placed on pipes and unistrut

Mr. Hoopingarner alleges that scaffold boards were placed on pipes and unistrut in violation of construction procedures. HD Tr. Vol. 1, p. 19; Vol. 2, pp. 34, 63-65. Mr. Hoopingarner's concern apparently is that such practice might damage the piping or inistrut. However, Mr. Hoopingarner could not state that such practice rendered Catawba unsafe. HD Tr. Vol. 2, pp. 64, 66, 105.

In any event, as Mr. Rogers states in his affidavit, scaffold boards used to support personnel may be placed on cable tray or unistrut supporting cable tray; procedures allow scaffolding on piping greater than 3". (Rogers Affidavit, paragraph 5.) Further Mr. Davison states in his affidavit, inspection procedures for piping specify requirements to be followed to detect any abnormal bends or dips in piping; corrective action would be taken in instances of damage. (Davison affidavit, paragraph 11.) Accordingly, it cannot be said that a material issue of fact is present and that public health and safety is compromised. Therefore Mr. Hoopingarner's allegation should be dismissed.

g. Improper contact between stainless steel and carbon steel

Mr. Hoopingarner alleges that insufficient measures were taken to eliminate abrasion between stainless steel and carbon steel pipes and flanges. HD Tr. Vol. 1, p. 20; Vol. 2, p. 67-68. However, Mr. Hoopingarner acknowledged that these pipes and flanges would be

inspected and was unable to state, as a fact, that this condition would render Catawba unsafe. HD Tr. Vol. 2, p. 68.

Mr. Rogers, in his affidavit, states that contact between carbon steel and stainless steel will not decrease the integrity of the subject piping. (Rogers affidavit, paragraph 6.) Mr. Davison, in his affidavit confirms this point. (Davison affidavit, paragraph 12.) As a result, it cannot be said that this matter raises a genuine issue affecting public health and safety. Mr. Hoopingärner allegation fails to raise an issue of material fact and should be dismissed.

h. Wet concrete

Mr. Hoopingarner alleges that concrete was improperly poured in forms that were wet. HD Tr. Vol. 1, p. 22; Vol. 2, p. 69. Mr. Hoopingarner states that this incident was an occupational Safety and Health Administration Concern (OSHA) rather than an NRC concern. HD Tr. Vol. 2, p. 69. Mr. Hoopingarner also states that such incident would not render Catawba unsafe. Id.

In any event, Mr. Rogers explains in his affidavat that

> ACI 347-11, Section 3.2.13 requires concrete formwork to be sufficiently tight to prevent loss of morter from the concrete, it does not require them to be caulked or sealed. QAP M-2 requires an inspection to verify that the forms are free of excess water prior to concrete placement. It does not require the formwork to be dry.
>
> It is unclear as to when the water was on the floor, prior to placement or after. If before, it is acceptable because the formwork does not need to be dry and procedurally the excess water was removed prior to placement. If it was observed after placement, it was most likely from the concrete "bleeding" which is normal during the placement/curing process.
>
> Mr. Hoopingarner states that he was not present during the period from formwork complete to concrete placement, therefore, he does not know what intermediate procedural steps were taken. [Rogers affidavit, paragraph 7]

In summary, Mr. Hoopingarner's allegation presents no issue of material fact which raises public health and safety concerns, and it should be dismissed.

i. Valves installed backwards

Mr. Hoopingarner alleges that he heard from co-workers that valves were installed backwards. HD Tr. Vol. 1, p. 26; Vol. 2, pp. 18-21. Mr. Hoopingarner stated that he did not see any valves put in backwards (HD Tr. Vol. 2, p. 18); that he did not know if any valves had been put in backwards (Id. at p. 19); and that if put in backwards, the valves could have been corrected. Id.

Mr. Rogers explains in his affidavit the three inspections that the valves undergo to assure they are properly installed. If errors are detected, corrections will be made as necessary. (Rogers affidavit, paragraph 8.)

In light of the above, it cannot be said that there is a Mr. Hoopingarner's affidavit raises a material statement of fact affecting the public health and safety, and it should be dismissed.

j. Flooding of diesel generator room

Mr. Hoopingarner alleges that the diesel generator room flooded and damaged the panels in the area. HD Tr. Vol. 1, p. 13; Vol. 2, pp. 13-17. However, Mr. Hoopingarner was unable to state how much damage was done. HD Tr. Vol. 2, p.17. Mr. Rogers, in his affidvait, explains that this incident was documented pursuant to QA inspection review. Corrective recommendations were made and corrective action was taken such as not to render this matter a threat to public health and safety. (Rogers affidavit, paragraph 9.) Therefore it cannot be said that Mr. Hoopingarner's allegation raises a question of material fact, and it must be dismissed.

k. Leaking of rainwater into control room

Mr. Hoopingarner alleges that on one occasion the roof of the control room leaked rain onto the control panels. HD Tr. Vol. 2, pp 16-18. See discussion of this matter at Section B.1.a, supra. It should be noted that when asked whether he maintained that this event rendered Catawba unsafe to operate, Mr. Hoopingarner replied that this would depend "on how much damage it did to the control panels." Id. p. 17. He then stated that he did not know how much damage, if any, was done by the rain. Id. Accordingly, it cannot be said that a genuine issue of material fact exists with regard to this matter, and it must be disimissed.

l. Misalignment of pipes

Mr. Hoopingarner alleges that pipes were misaligned. HD Tr. Vol. 1, P. 19; Vol. 2, pp 19-20. However Mr. Hoopingarner stated that he was not trained in pipe alignment (HD Tr. Vol. 2, p. 19); that he did not know as a fact that pipes were misaligned (Id. at p. 20); and that he did not know whether the situation, assuming it existed, was corrected. Id.

Mr. Rogers explains in his affidavit that piping passing through sleeves have standard clearance requirements established. These clearances are closely inspected by QC. Deviations are evaluated and corrective is taken so as to assure maintenance of the public health and safety. (Rogers affidavit, paragraph 10.) Therefore it cannot be said that Mr. Hoopingarner's allegation raises a question of material fact with respect to the public health and safety and it must be dismissed.

m. Harassment

Mr. Hoopingarner alleges that Mr. Phil Edwards of the QA Department was harassed by a welder and his supervisor who overruled him over some welds in the Spent Fuel Pool. HD Tr. Vol. 2, pp 50, 72-73.

Mr. Hoopingarner did not know if in fact there was poor workmanship involved. Id. at p. 49. He was unable to state if the subject welds were correct or incorrect. Id. at pp. 50-51. Further, Mr. Hoopingarner stated that if Mr. Edwards was harassed it did not impact the safety of the plant. ID. at p. 73

Mr. Hoopingarner mentions two other incidents of harassment; that affecting him and that affecting members of crew 90. Id. at pp. 72-73. In both instances Mr. Hoopingarner states that such harassment would not impact safety. Id.

Accordingly, it cannot be said that a genuine issue of material fact exists with regard to this allegation, and it must be dismissed.

n. Pipe lying on floor

Mr. Hoopingarner alleges that pipe and rebar were improperly lying on the floor. HD Tr. Vol.2, pp. 76-78. With respect to rebar touching the ground, Mr. Hoopingarner stated that such did not impact safety of plant. Id. at p. 78. As to pipe lying on the floor, Mr. Hoopingarner also stated that such did not impact the safe operation of Catawba. Id.

Mr. Rogers explains in his affidavit that even though rebar may be lying on ground, it must pass a QA Procedure M-2 inspection prior to its use. With respect to piping, all piping is cleaned and flushed at later intervals of installation. (Rogers Affidavit, paragraph 11.) This process and procedure provide adequate protection of the public health and safety. Therefore it cannot be said that a genuine issue of material fact exists with respect to the allegation, and it should be dismissed.

o. Drugs and alcohol

Mr. Hoopingarner alleges that the use of drugs and alcohol by employees at the site adversely impacts upon the plant. HD Tr. Vol. 2, pp 51-58. Specifically, Mr. Hoopingarner alleges that welding (Id. at p. 53), QA inspecting (Id. at p. 55), pipe alignment (Id. at p. 56), cable pulling (Id.) and scaffolding (Id. at p. 58) were adversely impacted by drug and alcohol use. However, Mr. Hoopingarner could not say that referenced welds were improper (Id. at p. 53); he never saw a QA inspector take drugs or alchohol (Id. at p. 55); he did not know if referenced pipes were improperly placed (Id. at p. 56); he did not know if cables were improperly pulled (Id.); and he did not know if any work done on referenced scaffolding was improper. Id. at p. 58. In sum, it cannot be said that Mr. Hoopingarner has raised a question of material fact which poses a threat to the public health and safety. This allegation should be dismissed.

p. Work-related concerns

Mr. Hoopingarner sets forth numerous allegations of unsafe or improper working conditions i.e., knife wielding (HD Tr. Vol. 2, pp 59-60), gambling (Id. at p. 62), favoritism (Id. at p. 66), acetylene bottles lying on side (Id., at p. 68), temporary ladder holding a pipe (Id. at pp 68-69), location of scaffold (Id. at p. 73), workers sleeping in corners (Id. at pp 73-74), working conditions in cooling tower (Id. at p. 74), open manholes on condensate and reactor water storage tanks (Id. at p. 78), piping on floor (Id. at p. 78), cooperation on the job (Id. at pp. 82-83) and miscellaneous OSHA and personnel concerns. Id. at pp. 83-84, 87-97. In each instance Mr. Hoopingarner stated either that the matter did not involve a safety concern (Id. at pp 48, 73, 78, 81, 83-84, 87-97) or that the matter did not adversely impact the safe operation of Catawba. Id. at pp 60-62, 66, 68-69,

74, 78, 87, 96. Given these responses, it cannot be said that any of these matters raise a disputed issue of material fact with respect to the health and safety of the public. These allegations should be dismissed.

q. Conclusion

On the basis of the above, Applicants maintain that Mr. Hoopingarner has failed to raise a single material fact in support of his allegations of systematic quality assurance deficiencies. At most, Mr. Hoopingarner has presented a wide-ranging list of isolated and unrelated concerns. In each instance his concern was acknowledged to have been corrected or he could not state that such concern adversely impacted upon the safe operation of Catawba. Under such circumstances Mr. Hoopingarner and his concerns should be dismissed from this proceeding.

4. Allegations with Respect to Applicants QA Program Failing to Comply with 10 CFR Part 50, Appendix B

As originally drafted, Contention 6 asserted, inter alia, that "Applicants have failed to provide a Quality Assurance program which meets the requirements of 10 CFR Part 50, Appendix B . . ." Applicants accordingly sought to ascertain through discovery the specific aspects of Appendix B which are allegedly not satisfied by their QA program. Palmetto Alliance has provided almost no detailed information in its discovery responses, however. In answer to Applicants' initial inquiry on this point (see Interrogatory 62[8] in Applicants' April 9, 1982 Interrogatories and Requests to Produce), Palmetto Alliance responded that it lacked sufficient knowledge to answer and that it was awaiting Applicants' responses to its interrogatories. (April 28, 1982 Response to Interrogatory 62, p. 12).

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[8] Interrogatory 62 states: What are the specific requirements of 10 C.F.R. Part 50, Appendix B which you contend Applicants' quality assurance pgoram does not satisfy?"

In its April 19, 1983 Supplemental Response, Palmetto Alliance responded to Interrogatory 62 by stating "Criteria I, II, X, XIV, XV, XVI, XVII." (Id. at p. 13). However, this answer did not provide any explanation as to the precise manner in which Palmetto Alliance alleged those criteria were not met. Indeed, with respect to Appendix B criteria the Board pointed out in its May 13, 1983 Order (ruling on Applicants' Motion to Compel further interrogatory responses) that: "[s]ome regulatory criteria are themselves very complex. Thus it may be necessary to say which part of such a criterion has been violated. See, e.g., criteria in 10 C.F.R. 50, Appendix B." (Id. at 3, emphasis added). See also p. 6, wherein the Board reiterated:

> it will not suffice to refer generally to Appendix B. Appendix B contains 18 separate criteria. Specific criteria should be cited. Furthermore, many Appendix B criteria are complex and it will be necessary to explain what part of a particular criterion is involved, if that is not self-evident.

Despite the Board's explicit direction on this point, Palmetto Alliance's Further Supplemental Responses, filed on May 27, 1983, provided no additional specification on this point. Moreover, the crucial sentence in Intervenors' discussion of this issue is completely garbled:

> Palmetto asserts that the Quality Assurance breakdown at Catawba is violative of specific criteria of 10 CFR Part 50, Appendix B. Specific QA criteria believed to be involved on the basis of information now known to Palmetto were set forth in cipates that a number of present and former Catawba worke 19, 1983, Answers. [Id., p. 6].

No corrected page was submitted by Intervenor.

Applicants believe that the above language is intended to refer to Mr. McAfee's May 19, 1983 deposition answers. (While it is possible that Intervenor intended to refer to their April 19, 1983 Supplemental Responses here, this seems unlikely since the Board had previously indicated that those answers were not sufficiently specific).

Applicants begin the discussion of the specifics provided by Mr. McAfee on this issue by noting that their QA Program, described in Duke Power Company's Topical Report "Quality Assurance Program Duke 1-A" has been reviewed and approved by the NRC Staff as it relates both to construction and operation of Catawba. See, for example, "Final Safety Evaluation Report Related to the Operation of Catawba Nuclear Station, Section 17.4

Mr. MacAfee was queried with respect to the bases for each of his allegations that Applicants' QA program fails to meet the requirements of 10 CFR Part 50, Appendix B.

a. 10 CFR Appendix B, Criterion XIII

Mr. McAfee alleges that Applicants' QA program does not comply with this criterion because of the "control room leaking." (MD Tr. p. 23) For a discussion of such see pp 17-18, supra., which demonstrates that Mr. McAfee's concern is without merit. Therefore, it is Applicants' view that this allegation fails to present a material fact with respect to non-compliance with Appendix B to 10 CFR Part 50 and should be dismissed.

b. 10 CFR Appendix B, Criterion II

Mr. McAfee alleged that Applicants' QA program does not comply with this criterion because of its "relation to the scaffolds -- suitable equipment." (MD Tr. p. 124) For a discussion of such, see p. 24, supra. which demonstrates that Mr. McAfee's concern is without merit. Therefore, it is Applicants' view that this allegation fails to present a material fact with respect to non-compliance with Appendix B to 10 CFR Part 50 and should be dismissed.

c. 10 CFR Appendix B, Criteria XIII and XV

Mr. McAfee alleges that Applicants' QA program does not comply with these criteria because, in some instances, he, and other inspectors, did not write NCIs, but instead resolved problems directly with craft. (MD Tr. pp 124-126) With respect to this matter, see the discussion at pp. 20-22, supra. It is Applicants' view that in light of this discussion the allegation fails to present a material fact with respect to non-compliance with Appendix B to 10 CFR Part 50 and should be dismissed.

IV. Conclusion

On the basis of the foregoing, Applicants maintains that the allegations of Messers. McAfee and Hoopingarner must be dismissed.